



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 570

IN THE MATTER OF MARTIN NIESKI

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Martin Nieski ("Nieski") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 21, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Nieski. The Commission has concluded its inquiry and, on March 10, 1998, found reasonable cause to believe that Nieski violated G.L. c. 268A, §17(c).

The Commission and Nieski now agree to the following findings of fact and conclusions of law:

1. Nieski was, during the time relevant, a member of the Dudley Board of Selectmen (the "Board"). As such, Nieski was a municipal employee as that term is defined in G.L. c. 268A, §1.^{1/} Nieski had been a member of the Board since 1995.
2. Nieski Incorporated ("Nieski Inc.") is a Massachusetts corporation formed in 1996. At the time relevant, Nieski's wife Catherine ("Catherine") was the sole officer, director, and shareholder of the corporation.
3. On February 10, 1997, Nieski Inc. submitted to the Board an application to transfer a package store liquor license from Ideal Liquors, Inc. to Nieski Inc. Catherine signed the application for the corporation. The Board approved the transfer application on February 24, 1997.^{2/}
4. The Town of Dudley assesses each package store license holder an annual fee of \$1,100. Ideal Liquors paid the \$1,100 annual liquor license fee in January 1997 when it renewed its license. Shortly after the Ideal Liquors license was transferred to Nieski Inc., the Town of Dudley sent Nieski Inc. a bill for the entire \$1,100 annual fee.
5. On April 7, 1997, the Board held a hearing at the request of Nieski Inc. to discuss the \$1,100 fee assessed.
6. At the April 7, 1997 meeting, Nieski appeared before the selectmen on behalf of Nieski Inc. and argued extensively that since Ideal Liquors had already paid the annual fee for its

license, the Board should not have charged Nieski Inc. with the annual fee again. Catherine was also present and made brief comments to the board.

7. Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent for anyone other than the municipality in relation to a particular matter in which the town has a direct and substantial interest.

8. The decision whether to uphold, modify or waive assessment of the annual liquor license fee is a particular matter in which the Town of Dudley had a direct and substantial interest.

9. By appearing before the Board and advocating on behalf of Nieski Inc. regarding the \$1,100 annual liquor license fee particular matter, Nieski acted as an agent for Nieski Inc. Therefore, by acting as Nieski Inc.'s agent in relation to a particular matter in which the town had a direct and substantial interest, Nieski violated §17(c).

In view of the foregoing violations of G.L. c. 268A by Nieski, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Nieski:

(1) that Nieski pay to the Commission the sum of two hundred and fifty dollars (\$250.00) as a civil penalty for violating G.L. c. 268A, §17; ^{3/} and

(2) that Nieski waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 14, 1998

^{1/}Nieski is no longer a member of the Board.

^{2/}Nieski did not participate as a Board member in this action.

^{3/} The Commission generally imposes larger fines for §17 violations. See, e.g., *In re Reed*, 1997 SEC 860 (private surveyor who served on a Conservation Commission violates §17(c) and fined \$1,500 for representing four private clients before his own board, three of those on multiple occasions). *In re Nutter*, 1994 SEC 710 (historic commission member fined \$1,000 for representing client before his own board). Here, however, Nieski was representing his wife's closely held corporation. The Commission has found the representation of family trusts and closely held corporations to be a mitigating factor in the past. See, e.g., *In re Reynolds*, 1989 SEC 423 and *In re Zora*, 1989 SEC 401, both §17 cases where the Commission imposed no fine for several reasons, one of which was the fact that a family trust or closely held corporation was involved.